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Defendant, TOLL BROTHERS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TOLL BROTHERS, INC.

Plaintiff,

vs.

CHANG SU-O LIN; HONG LIEN LIN;
HONG YAO LIN,

Defendants.

No. C08 00987 MMC

REPLY OF TOLL BROTHERS, INC. TO
COUNTER-CLAIM OF CHANG SU-O LIN,
HONG LIEN LIN AND HONG YAO LIN

CHANG SU-O LIN, HONG LIEN LIN
AND HONG YAO LIN,

Counter-Claimants,

vs.

TOLL BROTHERS, INC.,

Counter-Defendant

Counter-Defendant TOLL BROTHERS, INC. ("Toll") hereby responds to the
Counter-Claim for Declaratory Relief, Damages and Quiet Title ("Counter-Claim") filed by

Counter-Claimants Chang Su-O Lin, Hong Lien Lin and Hong Yao Lin (collectively the "Lins") as follows:

PARTIES

1. Answering the allegations contained in Paragraph 1, Toll admits on information and belief said allegations.

2. Answering the allegations contained in Paragraph 2, Toll admits that it is a Delaware corporation whose principal place of business is Horsham, Pennsylvania; that, through subsidiaries and affiliates, Toll engages in the business of building and selling homes, the acquisition of land, securing entitlements and approvals for development, land development work, and employs a staff, which includes, among others, planning, engineering and legal professionals. Except as specifically admitted herein, Toll denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

JURISDICTION

3. Answering the allegations contained in Paragraph 3, Toll admits said allegations.

VENUE

4. Answering the allegations contained in Paragraph 4, Toll admits said allegations.

INTRA-DISTRICT ASSIGNMENT

5. Answering the allegations contained in Paragraph 5, Toll admits said allegations.

GENERAL ALLEGATIONS

6. Answering the allegations contained in Paragraph 6, Toll admits said allegations, except that Toll and the Lins entered into the Contract on or about May 27, 2004, not May 20, 2004.

7. Answering the allegations contained in Paragraph 7, Toll admits on information and belief said allegations.

1 8. Answering the allegations contained in Paragraph 8, Toll admits that on or
2 about May 28, 2004, Toll recorded a Memorandum of Agreement with the Alameda County
3 Recorder's Office that made the existence of the Contract between the parties a matter of
4 public record. Except as specifically admitted herein, Toll denies each and every, all and
5 singular, generally and specifically, said allegations and the whole thereof.

6 9. Answering the allegations contained in Paragraph 9, Toll admits that in
7 connection with this action, Toll filed and recorded a Notice of Pendency of Action. Except
8 as specifically admitted herein, Toll denies each and every, all and singular, generally and
9 specifically, said allegations and the whole thereof.

10 10. Answering the allegations contained in Paragraph 10, Toll admits said
11 allegations.

12 11. Answering the allegations contained in Paragraph 11, Toll admits that under
13 the terms of the Contract, Toll had certain obligations to the Lins that formed a part of the
14 consideration of the Contract. The Contract speaks for itself. Except as specifically
15 admitted herein, Toll denies each and every, all and singular, generally and specifically,
16 said allegations and the whole thereof.

17 12. Answering the allegations contained in Paragraph 12, Toll admits that under
18 the terms of the Contract, the closing of Sub-Area 3 was scheduled for June 30, 2007.
19 Except as specifically admitted herein, Toll denies each and every, all and singular,
20 generally and specifically, said allegations and the whole thereof.

21 13. Answering the allegations contained in Paragraph 13, Toll alleges that it was
22 under no obligation to close the transaction at the time for the close of Sub-Area 3 as a
23 result of a failure of the Lins to perform their obligations under the Contract. Except as
24 specifically admitted herein, Toll denies each and every, all and singular, generally and
25 specifically, said allegations and the whole thereof.

26 14. Answering the allegations contained in Paragraph 14, Toll admits that when
27 issues arose over the pre-closing and closing conditions of Sub-Area 3, Toll met with
28 representatives of the Lins with regard to the utility vaults and overhead power lines.

1 Except as specifically admitted herein, Toll denies each and every, all and singular,
2 generally and specifically, said allegations and the whole thereof.

3 15. Answering the allegations contained in Paragraph 15, Toll admits that it gave
4 the Lins notice of its termination and/or rescission of the Contract on December 7, 2007.

5 Except as specifically admitted herein, Toll denies each and every, all and singular,
6 generally and specifically, said allegations and the whole thereof.

7 16. Answering the allegations contained in Paragraph 16, Toll admits that it gave
8 the Lins notice of its termination and/or rescission of the Contract on December 7, 2007.

9 Except as specifically admitted herein, Toll denies each and every, all and singular,
10 generally and specifically, said allegations and the whole thereof.

11 17. Answering the allegations contained in Paragraph 17, Toll admits that on
12 January 24, 2008, the Lins sent a letter in which the Lins claimed that Toll was in breach of
13 the Contract and demanded that Toll execute a quitclaim deed to remove the
14 Memorandum of Agreement as a cloud on the title to Sub-Area 3. Except as specifically
15 admitted herein, Toll denies each and every, all and singular, generally and specifically,
16 said allegations and the whole thereof.

17 18. Answering the allegations contained in Paragraph 18, Toll admits that section
18 4.4 of the Contract states that the Lins are allowed to keep Toll's deposit in the event that
19 Toll defaults under the Contract; that the Lins are still in possession of Toll's deposit in the
20 amount of \$7,735,000; and that the Lins breached the Contract with Toll by failing timely,
21 fully and adequately to perform the terms and conditions therein, thereby preventing Toll's
22 performance and discharging any obligation on the part of Toll. Except as specifically
23 admitted herein, Toll denies each and every, all and singular, generally and specifically,
24 said allegations and the whole thereof.

25 19. Answering the allegations contained in Paragraph 19, Toll denies each and
26 every, all and singular, generally and specifically, said allegations and the whole thereof.

27 **FIRST CAUSE OF ACTION**

28 20. Answering the allegations contained in paragraph 20, which incorporates

1 paragraphs 1-19, Toll refers to its answers to those same paragraphs and by such
2 reference incorporates them herein to have the same force and effect as if set forth fully at
3 length.

4 21. Answering the allegations contained in Paragraph 21, Toll admits said
5 allegations.

6 22. Answering the allegations contained in paragraph 22, Toll admits on
7 information and belief that the allegations of paragraph 22 are a statement of the Lins'
8 request to the Court.

9 **SECOND CAUSE OF ACTION**

10 23. Answering the allegations contained in paragraph 23, which incorporates
11 paragraphs 1-19, Toll refers to its answers to those same paragraphs and by such
12 reference incorporates them herein to have the same force and effect as if set forth fully at
13 length.

14 24. Answering the allegations contained in Paragraph 24, Toll denies each and
15 every, all and singular, generally and specifically, said allegations and the whole thereof.

16 25. Answering the allegations contained in Paragraph 25, Toll denies each and
17 every, all and singular, generally and specifically, said allegations and the whole thereof.

18 26. Answering the allegations contained in Paragraph 26, Toll admits that section
19 4.4 of the Contract states that the Lins are allowed to keep Toll's deposit in the event that
20 Toll defaults under the Contract; that section 18.1 of the Contract states that the Lins are
21 entitled to recover attorney's fees and costs in the event that Toll defaults under the
22 Contract; and that the Lins breached the Contract with Toll by failing timely, fully and
23 adequately to perform the terms and conditions therein, thereby preventing Toll's
24 performance and discharging any obligation on the part of Toll. Except as specifically
25 admitted herein, Toll denies each and every, all and singular, generally and specifically,
26 said allegations and the whole thereof.

27 27. Answering the allegations contained in Paragraph 27, Toll denies each and
28 every, all and singular, generally and specifically, said allegations and the whole thereof.

THIRD CAUSE OF ACTION

28. Answering the allegations contained in Paragraph 28, which incorporates paragraphs 1-26, Toll refers to its answers to those same paragraphs and by such reference incorporates them herein to have the same force and effect as if set forth fully at length.

29. Answering the allegations contained in Paragraph 29, Toll admits on information and belief said allegations.

30. Answering the allegations contained in Paragraph 30, Toll admits that the Lins seek to quiet title against Toll and the Memorandum of Agreement, which was recorded against the Property on May 28, 2004, and the Notice of Pendency of Action. Except as specifically admitted herein, Toll denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State Sufficient Facts)

Toll alleges on information and belief that the Counter-Claim and each purported cause of action contained therein fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Failure to Perform)

The Lins breached the Contract with Toll by failing timely, fully and adequately to perform the terms and conditions therein, thereby preventing Toll's performance and discharging any obligation on the part of Toll.

THIRD AFFIRMATIVE DEFENSE

(Full Performance)

Toll alleges that it timely, fully and adequately performed all duties and obligations it may have owed to the Lins arising out of the Contract prior to the commencement of this action, and each purported cause of action contained in the Counter-Claim is thereby barred.

FOURTH AFFIRMATIVE DEFENSE

(Breach of the Duty of Good Faith and Fair Dealing)

Toll alleges that the Lins breached the covenant of good faith and fair dealing owed to Toll, and the Counter-Claim and each purported cause of action contained therein is thereby barred.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Toll alleges on information and belief that the Counter-Claim and each purported cause of action contained therein is barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

Toll alleges on information and belief that the Counter-Claim and each purported cause of action contained therein is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Toll alleges on information and belief that the Counter-Claim and each purported cause of action contained therein is barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel/Ratification)

Toll alleges on information and belief that the Counter-Claim and each purported cause of action contained therein is barred by the approval and ratification of Toll's conduct by the Lins, and the Lins are therefore estopped from asserting any claim based thereon.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Toll alleges on information and belief that the Lins, by the exercise of reasonable effort, could have mitigated the amount of any damages allegedly suffered by them, and any recovery by the Lins is therefore barred.

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TENTH AFFIRMATIVE DEFENSE

(Intervening and Superseding Cause)

Toll alleges on information and belief that to the extent, if any, the Lins have suffered damages, these damages were not caused by any action or inaction of Toll, but by the actions and/or omissions of unnamed third parties, and any recovery by the Lins is therefore barred.

ELEVENTH AFFIRMATIVE DEFENSE

(Right to Amend Reserved)

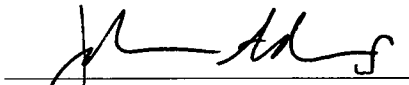
Toll presently has insufficient knowledge and information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Toll reserves the right to amend to assert additional defenses in the event that discovery shows that they are appropriate.

WHEREFORE, Toll prays for judgment against Counter-Claimants, and that Counter-Claimants take nothing on their counter-claim, for costs of suit incurred herein, and for such other and further relief as the Court deems just and proper.

DATED: May 27, 2008

HOGE, FENTON, JONES & APPEL, INC.

By


John H. Adams, Jr.
Attorneys for Plaintiff and Counter-Defendant, TOLL BROTHERS, INC.